

4 August 1978

MEMORANDUM FOR THE RECORD

FROM: [REDACTED]

SUBJECT: SCI Denials Working Group - Status Report

1. This memorandum will update recent developments concerning the tasking recently levied upon the SCI Denial Working Group to include recent changes made in the composition of that Group and current planning with respect to the accomplishment of the assigned task.

2. During the July SECOM meeting, the Working Group was tasked with the requirement to establish SCI appeals procedures. The Chairman stated that the tasking was inconsistent with current security manuals insofar as a contractor employee is concerned, the regulations forbid notification that an individual was being considered for SCI access and/or that he was subsequently disapproved for same. In addition thereto, the Chairman advised that he had been given a special assignment and suggested that he be replaced if the decision was made to proceed.

3. As a result of action taken by the writer, which was concurred in by the Chief, CSG, [REDACTED] DIA Security Office, agreed to serve as temporary Chairman for the purpose of developing the requested procedures. In addition, [REDACTED] C/I&CB/CD was appointed as the CIA representative.

4. The undersigned recommended that a meeting be held as soon as possible because of the fact that DOD is currently unilaterally developing its own procedures in connection with an overall review of DOD security policies. A copy of the applicable DOD recommendations identified as Chapter X and Chapter XI are attached. Inquiry disclosed that there is a great divergence of opinion among the services and DIA over the recommendations insofar as they pertain to the establishment of SCI appeal mechanism. In this regard, Mr. Maynard Anderson, the new Chief of Security Policy for Admiral Murphy believes that DOD does not have the authority to establish such procedures - this is arguable, and I submit in the absence of precise language precluding such that the DOD does have such authority. In this connection, it is believed that only

minimum changes should be made to the proposed DOD policy to insure the protection of the DCI's equities in the situation. It is submitted that the following procedures will accomplish this. At this point, it should be noted that during my initial conversation with Mr. Anderson, he stated that he would "kill" the DOD proposal. I have not discussed the following concept with him because I believe that it should first be discussed with and approved by Mr. Gambino at least in principal. Once this is done, Mr. Gambino can bring the subject up directly with Mr. Anderson, or it can be discussed at a higher level with Admiral Murphy.

5. My proposal is as follows:

The proposed DOD policy, as submitted, accomplishes two objectives of the Working Group.

(1). Establishes a uniform and centralized SCI appeal procedure for DOD which, subject to the modification as recommended below, can be adapted and utilized by CIA.

(2). Section 10-104 of Chapter X establishes a requirement to log all "adverse actions" (including SCI disapprovals) in the Defense Central Investigation Index. The latter would accomplish the first tasking of the Working Group, i.e., the establishment of a list of SCI disapprovals for use by the Community. As will be recalled, no action was taken in this regard by the Working Group because of reservations concerning the legality and/or the propriety to establish such an Index and include same in SRD because of recommendations that such an index would constitute a "black list" which might be hard to defend where the contributor or individuals involved had no direct connection with CIA. The DOD proposal will accomplish our objective insofar as DOD is concerned. CIA, of course, will continue to maintain files on CIS/SCI denials, not on a separate list, but such information will easily be retrievable where there is an interest in an individual by name. The Working Group can then, subsequently, consider the problem of formulating policies for the non-CIA/DOD NFIB members. This would be low priority matter.

6. As indicated above, it is submitted that a few changes would have to be made in the DOD recommended policy as written. There is already an exception provided in

paragraph 11-102. New language could be added to the section which would implement the SCI appeal procedure as follows:

a. The undersigned, after a considerable amount of research recommends that a two-stage appeal procedure be established as follows:

1. At the outset, however, it should be noted that it should be recommended that there be not automatic, routine written notification of a denial of a SCI clearance where it is clear that the individual is not aware of the fact of being considered for SCI clearance and the denial of that access would not adversely affect him, i.e., such as loss of employment or a reduction in earning capacity etc. Under these circumstances, it is believed that no written notice need be given. For the other individuals involved and/or if an individual questions the denial action, the following appeal procedures are recommended:

a. Military Department civilian and service members would initially appeal a SCI denial to the SIO or his designee.

b. CIA/SCI denials would initially appeal the adverse decision to the [redacted] Commanding Officer. Both would confront the subject in person as necessary and accept his written rebuttal to the information provided him that was the basis for the denial action.

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c. A second level of appeal would be established in the office of The Secretary of Defense, preferably under the cognizance of Mr. Maynard Anderson in Admiral Murphy's office.

d. All second level appeals that might be necessary would be referred to this office from all three military departments, DIA, CIA and NSA and would be handled under uniform procedures which would insure the protection of sources and methods and other CIA equities, [redacted] This final appellate step would permit the exercise of recognized legal procedures, i.e., the subject could be represented by counsel and would be presented with

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as much detailed information as permitted by ~~the~~ privacy and other national security considerations, including the statutory responsibilities of the DCI, insofar as it pertains to such national programs.

7. At this writing, I have not discussed the above proposal in detail with the office of General Counsel, however, I do not anticipate any problems and will discuss same with OGC, including both the privacy aspects and legal due process requirements.

25X1 8. [] has agreed to hold a meeting of the Working Group no later than the first part of the week, 25X1 beginning 7 August 1978. As indicated above, time is of the essence in this matter because of the DOD proposal. [] will be knowledgeable of the DOD position on this matter prior to the convening of the Working Group. In my absence, [] 25X1 [] will present the above appeals proposal to the Working Group for their consideration. It is believed that my proposal or a modification thereof will be approved during the month of August, 1978 and that it can be presented to SECOM for approval and implementation in September.

9. In conclusion, it is recommended that the Chief, C/CSG discuss the foregoing with the Chairman in order to obtain his approval and to assist in the implementation if he agrees 25X1 with same.

Attachment

